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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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*Ex parte*

RICHARD EARL MCNUTT, THOMAS LASZLO ARONSON,  
MASOOD GARAH, ALICE JUNE COURTNEY, BEN SPRINGBORN,  
DOUGLAS VAUGHN RAMSEY, ERIC FRANK STIMMEL,  
ERIK THOMAS RUSSELL OLSEN, JAMES HOWARD DARR,  
RODNEY JOHN GAIDIES, CONNIE T. MARSHALL,  
JON CHARLES ZARING, and KEVIN DWIGHT SATTERFIELD

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Appeal 2008-3055  
Application 09/330,963  
Technology Center 3700

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Decided: November 26, 2008

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Before TONI R. SCHEINER, ERIC GRIMES, and LORA M. GREEN,  
*Administrative Patent Judges.*

GREEN, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-9, 11, 12, 15-25, 27, 28, and 31-94. We have jurisdiction under 35 U.S.C. § 6(b).

### STATEMENT OF THE CASE

The claims are directed to an interactive wagering system. Claim 1 is representative of the claims on appeal, and reads as follows:

1. A system for interactive wagering, comprising:  
a database that stores data relating to a plurality of wagering accounts;  
and  
a plurality of types of user interface systems that are configured to:  
receive data relating to a single wagering account stored in the database;  
receive wager information from a user; and  
provide the data relating to a single wagering account to the user,  
wherein one of the plurality of types of user interface systems is a television wagering control system that provides the data relating to the single wagering account to a television distribution system and that receives the wager information from a television wagering terminal, and wherein at least another of the plurality of types of user interface systems is selected from the group consisting of:  
an interactive voice response control system that receives a telephone call from an external source, that provides, to the external source through the telephone call, voice prompts that correspond to the data relating to the single wagering account, and that receives wager information from the external source through the telephone call; and  
a computer wagering control system that provides the data relating to the single wagering account to an external computer and that receives wager information from the external computer through the Internet.

The Examiner relies on the following references:

Sakanishi	US 5,042,063	Aug. 20, 1991
Remillard	US 5,404,393	Apr. 4, 1995
Brenner	US 5,830,068	Nov. 3, 1998
Dahl	WO 97/28636	Aug. 7, 1997

We affirm.

#### ISSUE

The Examiner concludes that claims 1-9, 11, 15-25, 27, 31-42, 44-55, and 57-94 are rendered obvious by the combination of Dahl and Brenner.

Appellants contend that the combination does not render obvious a wagering system wherein one of the plurality of types of user interface systems is a television wagering control system that provides the data relating to the single wagering account to a television distribution system and that receives the wager information from a television wagering terminal.

Thus, the issue on Appeal is: Whether the combination of Dahl and Brenner renders obvious an interactive wagering system, wherein one of the plurality of types of user interface systems is a television wagering control system that provides the data relating to the single wagering account to a television distribution system and that receives the wager information from a television wagering terminal?

#### FINDINGS OF FACT

FF1 The “invention relates to interactive wagering systems and methods. More particularly, this invention relates to interactive wagering systems and methods that enable wagers to be placed via a television set-top box, via a computer, and/or via a telephone.” (Spec. 1.)

FF2 According to the Specification, Brenner uses a television set-top box that “enable[s] a user to receive wagering information and place wagers . . . in a user’s home.” (*Id.* at 2.) The Specification notes however, that

[a]lthough[ ] systems for telephone, set-top box, and computer wagering are known, no known system provides an integrated wagering system that enables a user to receive wagering information and place wagers using more than one of these methods. Moreover, many known systems for telephone, set-top box, and computer wagering are difficult to use and do not provide a user-friendly interface.

(*Id.*)

FF3 The Examiner rejects claims 1-9, 11, 15-25, 27, 31-42, 44-55, and 57-94 over the combination of Dahl and Brenner (Ans. 3). As Appellants do not argue the claims separately, we focus our analysis on claim 1, and claims 2-9, 11, 15-25, 27, 31-42, 44-55, and 57-94 stand or fall with that claim. 37 C.F.R. § 41.37(c)(1)(vii).

FF4 The Examiner cites Dahl for teaching “a method and means for providing a wagering service via an interactive telecommunications network or system.” (Ans. 3.)

FF5 According to the Examiner, Dahl discloses three different types of wagering interfaces: (1) an interactive voice response system that transmits a voice prompt to a potential player who responds via telephone by transmitting wagering data such as account information; (2) a computer wagering control system that receives wagering account information from a player via a personal computer; and (3) a television control system comprising a television and telephone interface, wherein a player can input

wagering information via the telephone and see the wagering and gaming information via the television (*id.* at 4).

FF6 The Examiner notes further that Dahl cites Remillard for its teaching that “interactive television terminals with set-top boxes are well known in the art.” (*Id.*)

FF7 Specifically, as to Remillard, Dahl teaches that “[i]nteractive telecommunication systems in which the user by means of a television set may participate in different activities are earlier known. As an example of the prior art it is referred to [Remillard] from which a method and an apparatus for accomplishing an interactive television connection using menu-windows are earlier known.” (Dahl I.)

FF8 What was not known, according to Dahl, were “methods or systems which allow prosecution of a binding participation in a game, and in particular in a game about money via interactive telecommunication systems.” (*Id.*) Thus, Dahl “provide[s] a method and a central unit which make it possible for players to participate in a binding or obligating way in games, and in particular to take part in gambling games in which the player shall play for a specific amount or stake, via a telecommunication network.” (*Id.*)

FF9 Thus, in the gambling system of Dahl, a central unit (the gambling station) is connected to a telecommunication network through suitable interfaces, and is “adapted to establish, partly one-way, partly two-way communications via a telecommunication network such as the public telephone network, direct transmission lines and television links.” (*Id.* at 1-2.)

FF10 The Examiner also finds that Dahl discloses that “interactive telecommunications systems earlier known in the art may also be included to the system without extending the scope of the . . . invention.” (Ans. 4.)

FF11 Specifically, Dahl emphasizes “that all the shown interconnections between the different function blocks are implemented as two-way data connections which may be realized in any known manner if only the capacity and the bandwidth is sufficient to transmit the required signals.” (Dahl 10.)

FF12 Thus, according to the Examiner, Dahl is drawn to a television wagering terminal, wherein a telephone is used to input wagering information, and a television is used to receive wagering and gaming information from a central gambling station (Ans. 8). Thus, the Examiner finds, Dahl does disclose using television links to establish some type of communication (*id.*). The Examiner notes that Dahl fails to explicitly disclose “a television wagering control system that receives **wagering information from a television wagering terminal e.g. via television lines.**” (*Id.*)

FF13 Brenner is cited by the Examiner for disclosing “a television wagering control system that provides data relative to a single wagering account to television distribution system and receives wagering information from a television wagering terminal that comprises . . . a set-top box and a television.” (Ans. 4-5.)

FF14 According to the Examiner, “Brenner discloses that such a system/interface decreases the amount of connect time via telephone lines and provide more information to the player via the television.” (*Id.* at 5.)

FF15 The Examiner concludes thus “[i]t would have been obvious to one of ordinary skill at the time of the invention to modify the television wagering terminal of Dahl with the set-top wagering terminal of Brenner.” (Ans. 5.)

#### PRINCIPLES OF LAW

The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) secondary considerations of nonobviousness, if any. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

In *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739 (2007), the Supreme Court rejected a rigid application of a teaching-suggestion-motivation test in the obviousness determination. The Court emphasized that “the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 1741. Thus, an “[e]xpress suggestion to substitute one equivalent for another need not be present to render such substitution obvious.” *In re Fout*, 675 F.2d 297, 301 (CCPA 1982); *see also DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006) (The “suggestion test is in actuality quite flexible and not only permits, but *requires*, consideration of common knowledge and common sense.”). In addition, “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 127 S. Ct. at 1739.



Further,

[i]f a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

*Id.* at 1740.

#### ANALYSIS

Appellants argue that although “Dahl is directed to a method and a system for wagering via an interactive telecommunication network” (App. Br. 7), “the difference between Dahl and appellants’ claimed invention is that Dahl fails to disclose a television wagering control system that receives wagering information from a television wagering terminal” (*id.* at 8).

Dahl, Appellants assert, “only discloses using one-way television links,” but nowhere “does Dahl teach using a television to transmit any information to the central gambling unit.” (*Id.* at 9.) Appellants note that the Examiner refers to Remillard, US Patent No. 5,404,393, cited by Dahl, as an example of interactive television terminals (*id.*). Appellants do not dispute “that interactive television terminals were known prior to appellants’ invention,” but urge that “Dahl does not disclose using two-way television links in connection with his invention.” (*Id.*) As to the Examiner’s assertion that “‘Dahl further discloses that interactive telecommunication systems earlier known in the art may also be included to the system without

extending the scope of the said invention,”” (*id.* (quoting Office Action, p. 3) (emphasis added)); Appellants assert that Dahl “does not teach that including telecommunication systems as a whole to his system would not extend beyond the scope of his invention,” but was only using such well known techniques to fill in the missing details of the figures (App. Br. 10).

As to Brenner, Appellants note that “Brenner discloses transmitting data to a television distribution system and receiving wagering information from a television terminal,” but Brenner differs from the claimed invention by not disclosing “using a plurality of types of user interface systems to receive data relating to a single account where one is a television wagering control system and at least another is either an interactive voice response control system or a computer wagering control system.” (*Id.* at 11.)

As to the combination, Appellants argue that the Examiner did not “provide an explicit analysis as to why one of ordinary skill in the art would modify Dahl in view of Brenner to achieve appellants’ invention.” (*Id.*) First, Appellants argue, “nowhere does Dahl show or suggest the use of two-way television links in his system,” thus, “there is nothing in Dahl that would lead one of skill in the art to modify Dahl to include two-way television links such as found in Brenner.” (*Id.* at 12.) Appellants assert that the Examiner may be relying on Brenner’s advantage of providing more information to the player through the television in concluding that the invention would have been obvious, Appellants assert that Dahl already provides information to users through the television, thus Dahl discloses the same advantage that the Examiner identifies in Brenner (*id.* at 12-13). Thus, Appellants assert, “this alleged advantage of Brenner would provide no

motivation for one of skill in the art to make any modification of Dahl.” (*Id.* at 13.)

Appellants argue further that the “alleged advantage of Brenner of decreasing the amount of connect time via telephone lines does not appear to be an advantage identified by the section cited to by the Examiner, and even if it was, Dahl already provides such an advantage.” (*Id.* at 14.)

Appellants’ arguments are not convincing. First, if Dahl had explicitly disclosed using two-way television links in connection with the disclosed gambling system, the art would have been more properly applied under § 102 rather than § 103. Second, the Examiner acknowledges that Dahl fails to explicitly disclose a television wagering control system that receives wagering information from a television wagering terminal, that is, via television lines (FF12). But we agree with the Examiner that Dahl is not limited to the telecommunications exemplified in the figures and Examples of Dahl. Specifically, Dahl teaches that “all the shown interconnections between the different function blocks are implemented as two-way data connections which may be realized in any known manner if only the capacity and the bandwidth is sufficient to transmit the required signals.” (FF11.)

As to the arguments to Brenner, again, we agree that Brenner does not disclose the wagering system of claim 1. Brenner, however, was relied upon as additional evidence that the use of a set-top box and television to provide wagering data to a television distribution system and to receive wagering information from the television wagering terminal was known in the art (FF13).

Although Appellants acknowledge the Supreme Court's decision in *KSR* (App. Br. 11), Appellants' arguments as to the combination, in essence, are to the effect that without a distinct advantage provided by the prior art for making the combination, the combination must fail. But, as noted by the *KSR* court, "the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." 127 S. Ct. at 1741.

In the instant case, Dahl notes that interactive television terminals with set-top boxes are well known in the art (FF6 and FF7). Dahl also specifically states that any telecommunications system that has the required bandwidth may be used (FF11). Brenner provides further evidence that interactive television terminals with set-top boxes for use in interactive wagering systems were known to the ordinary artisan. Thus, we agree with the Examiner that it would have been well within the level of skill of the ordinary artisan to use interactive television terminals with set-top boxes in the gambling system of Dahl. As noted by the Court in *KSR*, "[a] person of ordinary skill is also a person of ordinary creativity, not an automaton." 127 S. Ct. at 1742.

The Examiner also rejects claims 12, 28, 43, and 56 over the combination of Dahl and Brenner, as further combined with Sakanishi (Ans. 6).

As Appellants merely rely on their arguments made with respect to the rejection over the combination of Dahl and Brenner, this rejection is also affirmed.

### CONCLUSIONS OF LAW

We conclude that the combination of Dahl and Brenner renders obvious an interactive wagering system, wherein one of the plurality of types of user interface systems is a television wagering control system that provides the data relating to the single wagering account to a television distribution system and that receives the wager information from a television wagering terminal.

Thus, the rejection of claims 1-9, 11, 15-25, 27, 31-42, 44-55, and 57-94 over the combination of Dahl and Brenner, and the rejection of claims 12, 28, 43, and 56 over the combination of Dahl and Brenner, as further combined with Sakanishi, are affirmed.

### TIME LIMITS

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

### AFFIRMED

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